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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[redacted]

File: WAC 00 119 51856 Office: CALIFORNIA SERVICE CENTER Date: JAN 14 2004

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner appears to have retained representation. The petitioner's ostensible representative filed a Form G-28, Notice of Entry of Appearance in this matter. That notice does not state that the representative is an attorney. Further, that putative representative's name does not appear on the roster of accredited representatives. The record contains no indication that the petitioner's putative representative is authorized to represent the petitioner. All representations will be considered, but the decision will be furnished only to the petitioner.

The petitioner is a travel agency. It seeks to employ the beneficiary permanently in the United States as a travel guide. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification.

On appeal, the petitioner submits a handwritten statement.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

8 C.F.R. § 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The regulation at 8 CFR § 204.5(l)(3)(ii) states, in pertinent part:

> (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.
>
> (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Eligibility in this matter hinges on the petitioner demonstrating that the beneficiary was eligible for the proffered position on the priority date of the petition, the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The petitioner must also demonstrate that it had the continuing ability to pay the proffered wage beginning on the priority date. Here, the request for labor certification was accepted for processing on November 21, 1995. The labor certification states that the position requires two years of experience in the job offered. The labor certification states that the proffered wage is $15 per hour, which equals $31,200.

The Form I-140 petition was submitted on March 15, 2000. With the petition the petitioner submitted a Form ETA 750 Part B Statement of Qualifications in which the beneficiary stated that she had worked as a bilingual travel guide for California Turismo Ltda. of Sao Paulo, Brazil from January 1986 to May 1989.

Because the evidence submitted was insufficient to demonstrate satisfactorily that the beneficiary has the requisite two years of work experience, the California Service Center, on September 28, 2000, requested pertinent evidence. Consistent with the requirements of 8 C.F.R. 204.5 § (l)(3)(ii), the Service Center requested that evidence of the beneficiary's experience be in the form of letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien. The Service Center requested that the letter be on the alleged former employer's letterhead.

In that request for evidence, the Service Center also requested that the petitioner provide evidence of its ability to pay the proffered wage. The Service Center noted that, pursuant to 8 C.F.R. § 204.5(g)(2), the evidence should be in the form of copies of annual reports, federal tax returns, or audited financial statements.

In response, the petitioner submitted a letter, dated November 11, 2000. That letter purports to be from the ex-manager of human resources of California Turismo Ltda., the beneficiary's alleged previous employer. That letter states that the petitioner worked for that company as a travel guide from January 1986 to May 1989 as the beneficiary claimed. The letter was not provided on the employer's letterhead as the Service Center requested. The letter explained that the company had gone out of business and that no letterhead was available.

The petitioner provided copies of the first pages of the 1996, 1997, 1998, and 1999 Form 1040 U.S. Individual Tax Returns of the petitioner's owner. The petitioner also provided the corresponding Schedules C, Profit or Loss from Business (Sole Proprietorship) for 1996, 1997, and 1998.

The 1996 Schedule C shows that the petitioner made a net profit of $5,352 during that year. The petitioner's owner declared an adjusted gross income of $5,746 during that year, including all of the petitioner's profit, offset by deductions.

The 1997 Schedule C shows that the petitioner made a net profit of $4,359 during that year. The petitioner's owner declared an adjusted gross income of $4,159 during that year, including all of the petitioner's profit, offset by deductions.

The 1998 Schedule C shows that the petitioner made a net profit of $9,033 during that year. The petitioner's owner declared an adjusted gross income of $8,413 during that year, including all of the petitioner's profit, offset by deductions.

The 1999 Form 1040 shows that the petitioner's owner declared an adjusted gross income of $8,413 during that year, including all of the petitioner's profit, offset by deductions. The petitioner provided no Schedule C for that year.

On February 9, 2001, the director denied the petition, finding that the evidence submitted was insufficient to demonstrate that the beneficiary has the requisite two years of salient work experience. The director observed that, for the alleged ex-manager of human resources to write such a letter implies that employment records exist, but that no such records were provided

to corroborate the petitioner's employment claim.

On appeal, the petitioner stated, "We believe that [the beneficiary] has and had the minimum requirements. We will introduce more evidences [sic] that are being sent from Brazil." No further information, argument, or documentation was received from the petitioner or from anyone acting on its behalf.

The regulation at 8 C.F.R. 204.5 § (l)(3)(ii) requires that that evidence of the beneficiary's experience be in the form of letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

The employment verification letter was not on letterhead as the Service Center had requested, which necessarily affects its credibility. The explanation given, that the alleged former employer is no longer in business and no letterhead is available, is feasible. As the director observed, however, that the ex-manager of human resources was able to write such a detailed letter implies that employment records exist. Under these circumstances, with the veracity of the information in that letter open to question, those records should have been provided. The records were not provided and no explanation was given for not providing them. Additionally, no contact information was provided for the ex-manager of human resources of California Turismo, Ltda., in contravention of the regulatory requirements.

The evidence submitted does not demonstrate credibly that the beneficiary has the requisite two years of experience. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

Beyond the decision of the director, the petitioner failed to demonstrate that it had the ability to pay the proffered wage during 1996, 1997, and 1998.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.